



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16732  
March 10, 2003

RE: MV00001939  
[REDACTED]  
[REDACTED]  
T/B [REDACTED]  
\$2,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001939, which includes your appeal on behalf of [REDACTED] ([REDACTED]) as owners of the T/B [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2,000.00 penalty for the following violation:

| <u>LAW/REGULATION</u> | <u>NATURE OF VIOLATION</u>  | <u>ASSESSED PENALTY</u> |
|-----------------------|---|-------------------------|
| 46 CFR 4.05-10        | Failure to report a marine casualty in writing, within five days, to the Officer in Charge, Marine Inspection, at the port where it occurred. | \$2,000.00              |

The violation was first noted by the Coast Guard on March 9, 2000, when a Coast Guard inspector discovered the T/B [REDACTED] at the Port of New Orleans, Louisiana, with its starboard stern corner knuckle damaged and torn from its deck to the waterline. It was subsequently discovered that neither the damage to the T/B [REDACTED] nor the cause of that damage was reported to the Coast Guard prior to the inspector's visit.

On appeal, you deny the violation and contend, "[REDACTED] was not required to file a CG-2692 report regarding this incident." You first contend, "[REDACTED] was not the appropriate party to file any required CG-2692, as that responsibility fell to [REDACTED] [the apparent charterer of the barge]...." Next, you contend that "no CG-2692 was required to be filed because the incident did not constitute a reportable marine casualty." In conclusion, you request that the violation be dismissed and assert that "[t]o the degree that the incident was reportable, [REDACTED] should have filed a timely report...[h]owever, [REDACTED] should not be penalized for failing to report an incident that it had no first hand knowledge of, and which, based on its limited knowledge, would not have been reportable." Your appeal is denied for the reasons described below.

March 10, 2003

Before I begin, I believe a brief recitation of the facts is in order. The record indicates that [REDACTED] tendered the T/B [REDACTED] to [REDACTED] ([REDACTED]) on February 23, 2000. On March 3, 2000, a representative of [REDACTED] informed [REDACTED] that one of [REDACTED]' fleet tugs, the M/V [REDACTED] had struck and damaged the T/B [REDACTED] the same day. The incident occurred as the M/V [REDACTED] attempted to pull the T/B [REDACTED] from the [REDACTED] Dock located at Mile 437.7 on the Lower Mississippi River. The barge did not clear the end of the [REDACTED] and fractured the starboard stern knuckle of the T/B [REDACTED]. On March 8, 2000, [REDACTED] appointed an independent marine surveyor, [REDACTED], to survey the barge on [REDACTED]'s behalf. Shortly thereafter, [REDACTED] received an estimate from [REDACTED] indicating that the repair costs for the T/B [REDACTED] would be approximately \$10,660.00. On March 9, 2000, a Coast Guard Marine Inspector from the Port of New Orleans inspected the vessel and issued a CG-835 requiring that permanent repairs be made to the vessel and that the requisite CG-2692, report of marine casualty, be filed. In addition, the inspector removed the vessel's Certificate of Inspection pending repairs. The repairs were completed on March 20, 2000, at a cost of \$9,760.20. [REDACTED] eventually filed the CG-2692 on April 5, 2000.

I will now discuss the violation in issue, beginning with your assertion that [REDACTED] was not the appropriate party to file the CG-2692 Form. Citing the "person in charge" language of 46 CFR 4.05-10, you assert that "[REDACTED] was the 'person in charge' of the vessel" and conclude that because "[REDACTED] had the care, custody and control of both the towing vessel and the [REDACTED]" and "[t]here were no [REDACTED] employees or representatives present during the incident," [REDACTED] should not be required to provide the Form 2692. You further assert that "[i]t is irrelevant, from a control and reporting standpoint, that [REDACTED] was the ultimate owner of the vessel or that [REDACTED] had to reimburse [REDACTED] for the damage sustained." You cite the disjunctive language of the regulation—that the "owner, agent, master, operator, **or** person in charge...shall, within five days, file a written report of any marine casualty" (emphasis added)—and contend that the purposes of the regulation would be thwarted if [REDACTED] were required to file the Form 2692. To that end, you assert that "[n]ot only could [REDACTED] not have added anything useful to the reporting process, there would have been a risk that the Coast Guard received faulty information due to the filtered communication process." You conclude, "the Coast Guard should require the reporting from the operator, as the person in charge, and only in those limited circumstances where operating reporting is impossible, look to the owner or other entities to take responsibility." I do not agree with your reading of the regulation.

46 CFR 4.05-10(a) makes clear that:

[t]he owner, agent, master, operator, **or** person in charge shall, within five days, file a written report of any marine casualty. This written report is in addition to the immediate notice required by §4.05-1. This written report must be delivered to the Coast Guard Marine Safety Office or Marine Inspection Office. It must be provided on form CG-2692...

Based upon the plain meaning of the regulation, it is clear that any member of the aforementioned class could reasonably be required to submit a CG Form 2692. Indeed, there is

March 10, 2003

no emphasis on the “person in charge” requirement. Instead, any member of the five classes noted could be required to file the Form. Contrary to your assertion, I believe that a broad reading of the regulation best serves the Coast Guard. The requirements of 46 CFR Part 4 are meant to ensure that marine casualties are reported quickly and in sufficient detail to allow the Coast Guard to properly mount an investigation. This principal was recently summarized by the Ninth Circuit as follows:

The purpose of this reporting requirement is to allow the Coast Guard to investigate the cause of the casualty; to ascertain whether misconduct, incompetence, negligence, unskillfulness, or willful violation of law contributed to that cause; and to determine whether new laws or regulations are needed to prevent a recurrence of the casualty.

*Herman v. Tidewater Pac.*, 160 F.3d 1239, 1243 (9<sup>th</sup> Cir. 1998) (citation omitted). By making all involved parties liable for the submission of the written report of the marine casualty, the Coast Guard increases the likelihood that it will receive the required report while simultaneously ensuring that the purposes of the reporting requirement are met. Therefore, given the plain language of the regulation and because [REDACTED] is, in fact, the owner of the T/B [REDACTED], I do not agree that only the “person in charge” should be required to submit the Form 2692. Furthermore, it is clear that the Coast Guard ascribed culpability to [REDACTED] based upon the fact that it was made aware of the incident on the day of its occurrence. As the owner of approximately 200 towboats, 5050 dry cargo barges, and 440 tank barges, you should have at the very least discussed these reporting requirements with [REDACTED].

I will now address your contention that a reportable incident did not occur. You contend that the event in issue did not “trigger any of the reporting requirements of 46 CFR 4.05-1.” Specifically, you contend that “the damage to the starboard stern knuckle and transom did not materially or adversely effect the seaworthiness of the vessel (as defined in 46 CFR 4.05-1(a)(4)) and therefore, did not require the filing of a CG-2692.” You note that the damage occurred to the barge while it was empty and add that the barge was subsequently “transported by [REDACTED] to [REDACTED] without incident.” Furthermore, you assert that “[a]fter careful assessment of the seaworthiness and a barge damage survey completed on March 8, 2000 by [REDACTED], it was determined the incident was not reportable.” You further assert that the damage incurred to the T/B [REDACTED] does not fall into any of the other reportable incident requirements of 46 CFR 4.05-1 because it did not meet the \$25,000.00 threshold. I do not agree with your interpretation.

In relevant part, 46 CFR 4.05-1(a)(4) makes clear that the term “marine casualty” includes “[a]n occurrence materially and adversely affecting the vessel’s seaworthiness or **fitness for service or route**, including but not limited to fire, flooding of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems.” (emphasis added). The case file clearly evidences that the vessel’s “fitness for service or route” was materially affected by the damage in issue. Indeed, the day after the incident, the barge was transported to the [REDACTED] Shipyard for survey and repair. Although the damage was above the waterline while the vessel was empty, it is evident that it could not take on any cargo in its damaged condition. The fact that the barge was quickly repaired serves only

March 10, 2003

to emphasize this point. Therefore, regardless of the cost of repair, it is evident that the barge was not fit for either service or its ordinary route. For the reasons stated above, I find that the damage incurred by the T/B [REDACTED] met the definition of "marine casualty" set forth at 46 CFR 4.05-1(a)(4). As such, [REDACTED] was required to file a Form 2692 within 5 days of the incident, per 46 CFR 4.05-10(a).

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the \$2,000.00 penalty assessed by the Hearing Officer, rather than the \$5,000.00 preliminarily assessed or \$25,000.00 maximum permitted by statute to be appropriate in light of the circumstances of the case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$2,000.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 100160  
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 4.25% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR  
Deputy Chief,  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office  
Commanding Officer, Coast Guard Finance Center